Paul.E.Kruger@saj02.usace.army.mil

10/10/02 11:48 AM

To: george_feher@urscorp.com, peter_green@urscorp.com
cc:
Subject: FW: Questions Incident to the 9 Oct 02, meeting for the KW Airpor t Runway Feasibility Study

-----Original Message-----
From: Kruger, Paul E SAJ
Sent: Thursday, October 10, 2002 11:37 AM
To: 'peter_green@urs.corp'; George Feher (E-mail)
Cc: Studt, John F SAJ; Anderson, Victor B SAJ; Anita Bain (E-mail); Annalise Mannix-Lachner (E-mail); Audra Livergood (E-mail); Bill Kruczynski (E-mail); Billy Causey (E-mail); Andrew Gude (E-mail); David Rackley (E-mail); Fritz Wettstein (E-mail); Gus Rios (E-mail); Jeannette Hobbs (E-mail); Laurie A. Mc Hargue Ph. D. (E-mail); Mark Rosch (E-mail); Ralph Gouldy (E-mail); Randy Grau (E-mail); Rickey Ruebsamen (E-mail)

Subject: Questions Incident to the 9 Oct 02, meeting for the KW Airport Runway Feasibility Study

Mr. Feher, Mr. Green,-

Per your request for written questions from the participating agencies, (subsequest to the recommendation of Ms. Bain SFWMD), the following questions/observations below are submitted. The Corps wishes to preface the questions with a few observations and remarks. This email expands visibility of the proposed project to agencies and individuals who may be able to contribute to a circumspect analysis of the project.

The Corps is neither for or against any project. This project proposes to impact 31 acres of saltmarsh, mangrove and unique salt pond habitat. Corps sequencing, (as mentioned yesterday), must consider: avoidance of impact to the aquatic environment; minimization of unavoidable impacts and; mitigation for only those impacts which are unavoidable. This Corps response to your request for input recommending mitigation alternatives/options;- does not imply a permit may be issued for this project and; it does not imply a permit may not be issued for the project. This email is intended to further the dialog established yesterday and to facilitate written responses by the applicant to questions raised.

1. The project's stated purpose was to bring the airport into compliance with FAA regulations. Please state this purpose and any other secondary purposes or benefits associated with project including; current passenger capacity, anticipated increases in take offs and landings, change in aircraft types and the relation of this to potential secondary and cumulative impacts to the aquatic environment . This includes connections to vessels which may mean more ship traffic in the KW harbor.

2. Please identify the encroachments into the FAA clear zone (private buildings which the applicant does not intend to have removed) by location and name of owner. Please state why these obstructions would be allowed to remain.

3. Please discuss Engineer Materials Arresting Systems to slow aircraft over shoots and describe why or why not these might be used in combination with a minimized project to achieve a similar safety factor.

4. (I believe) URS & FAA said the clear zone (in length) would remain the same if smaller planes were used. Please document this statement.

5. Four over shoots were reported in the last 20 years at the KW airport. Please identify the causes of these and relate the incidents to technology, weather, human error. Please state any changes which have taken place to preclude there occurence and/or; relate any technology which is available but has not been installed which might preclude simila incidents.

6. The Corps supports the SFWMD's observation that no opportunities for the mitigation of direct impacts are currently known. The unique habitat of the salts ponds may not be replicated at another site.

7. In addition to direct impacts the Corps believes secondary and cumulative impacts regarding this project are potentially more serious than direct impacts. The Corps understands the current passenger total to be between 200k to 300k per year. The airport expansion may double this passenger total. A change in the Cuban government may further increase air traffic in the future. These potential threat to the aquatic environment, involving the full specturm of effluent, development/growth, boat groundings in seagrass and coral, and other activities should be addressed.

8. A complete analysis of alternatives involving the Marathon Airport should be considered. Also the no action scenario should be detailed. What will happen if the permit is not issued?

9. In addition to the types of mitigation proposed by the applicant, (exotic removal, creation, enhancement and restoration) for direct impacts;- the applicant should consider acquistion of land for restoration.

10. No proposal for mitigation of secondary/cumulative impacts was presented. The Corps requests the applicant consider a "head tax/user impact fee" based on a per person utilization. For example, a $1.00 start and landing fee per passenger. This dollar could be provided to the Florida Keys Environmental Restoratin Trust Fund (FKERTF) to acquire, enhance, restore, and create wetland and marine resources. the funds would used to off-set secondary and cumulative impacts to the unique and fragile habitats and ecological systems of the Florida Keys. These include; the National Marine Sancutary, terrestrial wetlands, seagrass beds, coral, water quality projects,etc. The Corps would propose a consumer price index tied increase per year or a percentage increase to accont for inflation over time. The FKERTF is administer by the Audubon Society and has had achieved significant success over a number of years. Please consider the above and propose mechanisms for mitigation of the significant secondary and cumulative impacts associated with the project.

11. The project impacts previous accomplished restoration sites and an area of fresh water lens. Additional mitigation may be required for these areas. Please consider a proposal for mitigation of these resources.

12. Please include impacts to the existing hydrology and how the project would affect adjoining areas.

Thank for your time in consideration of the above. Please let me know if I need to clarify any issues raised.

Paul Kruger
Monroe County Team Leader

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
9721 Executive Center Drive North
St. Petersburg, Florida 33702

October 28, 2002

Messrs. George Feher and Peter Green
URS Corporation
7650 West Courtney Campbell Causeway
Tampa, Florida 33607-1462

Dear Messrs. Feher and Green:

This responds to your request that the National Marine Fisheries Service (NOAA Fisheries) provide comments in response to the October 9, 2002, pre-application meeting concerning the Runway Safety Area Feasibility Study for Key West International Airport in Monroe County, Florida.

According to information provided at the pre-application meeting, the proposed project could directly impact, by filling, 31 acres identified as Essential Fish Habitat (EFH) by the South Atlantic Fishery Management Council (SAFMC). Categories of EFH found within the project area may include scrub/shrub mangroves, estuarine emergent wetlands, intertidal flats, seagrasses, and coral and hardbottom reef habitats. Several of these categories of EFH have also been designated as Habitat Areas of Particular Concern (HAPC) by the SAFMC. HAPC's are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area.

Federally managed species associated with mangrove, seagrass, and wetland habitat include postlarval, juvenile, and adult gray, lane and schoolmaster snappers; juvenile Goliath grouper and mutton snapper; and adult white grunt. Detailed information on the snapper/grouper complex (containing ten families and 73 species), shrimp, and other Federally managed fisheries and their EFH is provided in the 1998 amendment of the Fishery Management Plans for the South Atlantic region prepared by the SAFMC. The 1998 generic amendment was prepared in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Relevant information that may be of use in addressing requirements of the MSFCMA is enclosed.

Pursuant to the MSFCMA, Federal agencies are to consult with NOAA Fisheries when any activity they propose fund, permit, or undertake may have an adverse impact on designated EFH. Should the responsible Federal agency determine that the action may adversely affect EFH, an EFH assessment should be prepared and submitted to NOAA Fisheries in order to initiate the EFH consultation

process. The EFH assessment may be incorporated in the National Environmental Policy Act document prepared for the project. At a minimum, the EFH assessment should include the following information:

1. A description of the proposed action;

2. An analysis of the individual and cumulative impacts of the action on EFH, Federally managed species, and associated species by life history stage;

3. The Federal Aviation Administration or lead Federal agency's views regarding the effects of the action on EFH; and

4. Any mitigation proposed to minimize and offset adverse project impacts to EFH.

In addition, we recommend that you include the following information in the assessment:

1. A detailed analysis of alternatives to the proposed action including the use of Engineering Materials Arresting Systems, a smaller-scale project, a combination of both the aforementioned alternatives, use of the Marathon and Miami International Airports, and the no action alternative;

2. Information regarding the purpose or need to impact wetlands, efforts to avoid and minimize adverse impacts to the wetlands, and measures that would be implemented to offset (compensate for) unavoidable impacts to EFH and other habitats and living marine resources; and

3. A review of pertinent scientific literature concerning specific habitats and species that may be directly or indirectly affected by the proposed action, and potential short-term and long-term effects on these habitats and species.

We appreciate the opportunity to provide these comments. Related correspondence should be addressed to the attention of Ms. Jocelyn Karazsia at our Miami Office. She may be reached at 11420 North Kendall Drive, Suite #103, Miami, Florida 33176, or by telephone at (305) 595-8352.

Sincerely,

David H. Rackley

for Andreas Mager, Jr.
Assistant Regional Administrator
Habitat Conservation Division

Enclosure

cc:
EPA, Marathon
DEP, Marathon
FFWCC, Tallahassee
FWS, Big Pine Key
F/SER4
F/SER45 Karazsia (w/enclosure)
URS Corp., Miami (w/enclosure)
FAA, Orlando (w/enclosure)
SFWMD
COE, Miami

Essential Fish Habitat:

A Marine Fish Habitat Conservation Mandate for Federal Agencies

South Atlantic Region

National Marine Fisheries Service
Habitat Conservation Division
Southeast Regional Office
9721 Executive Center Drive North
St. Petersburg, FL 33702
727/570-5317

February 1999
(revised 10/01)

Executive Summary

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) set forth a new mandate for the National Marine Fisheries Service (NMFS), regional fishery management councils (FMC), and other Federal agencies to identify and protect important marine and anadromous fish habitat. The EFH provisions of the MSFCMA support one of the Nation 's overall marine resource management goals - maintaining sustainable fisheries. Essential to achieving this goal is the maintenance of suitable marine fishery habitat quality and quantity. The FMCs, with assistance from NMFS, have delineated "essential fish habitat" (EFH) for Federally managed species. As new FMPs are developed, EFH for newly managed species will be defined as well. Federal action agencies which fund, permit, or carry out activities that may adversely affect EFH are required to consult with NMFS regarding the potential impacts of their actions on EFH, and respond in writing to NMFS or FMC recommendations. In addition, NMFS and the FMCs may comment on and make recommendations to any state agency on their activities which may affect EFH. Measures recommended by NMFS or an FMC to protect EFH are advisory, not proscriptive.

On December 19, 1997, interim final rules were published in the Federal Register (Vol. 62, No. 244) which specify procedures for implementation of the EFH provisions of the MSFCMA. The rules, in two subparts, address requirements for fishery management plan (FMP) amendment, and detail the coordination, consultation, and recommendation requirements of the MSFCMA.

Within the area encompassed by the NMFS Southeast Region, EFH has been identified for hundreds of marine species covered by 20 FMPs, under the auspices of the Gulf of Mexico, South Atlantic, or Caribbean FMC or the NMFS. Generic FMP amendments delineating EFH for species managed by the three FMCs and NMFS were completed in early 1999. In addition, EFH for some species managed by the Mid-Atlantic FMC have been identified and include various coastal and offshore waters as far south as the Florida Keys.

Wherever possible, NMFS intends to use existing interagency coordination processes to fulfill EFH consultations for Federal agency actions that may adversely affect EFH. Provided certain regulatory specifications are met, EFH consultations will be incorporated into interagency procedures established under the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes. If existing processes cannot adequately address EFH consultation requirements, appropriate new procedures should be developed in cooperation with the NMFS. Programmatic consultations may be implemented or General Concurrences may be developed when program or project impacts are individually and cumulatively minimal in nature. Moreover, NMFS will work closely with Federal agencies on programs requiring either expanded or abbreviated individual project consultations.

An effective, interagency EFH consultation process is vital to ensure that Federal actions are consistent with the MSFCMA resource management goals. The NMFS will strive to work with action agencies to foster an understanding of EFH consultation requirements and identify the most efficient interagency mechanisms to fulfill agency responsibilities.

ESSENTIAL FISH HABITAT:

A Marine Fish Habitat Conservation Mandate for Federal Agencies

Introduction

This document has been prepared by the Southeast Regional Office of the National Marine Fisheries Service (NMFS) to provide an overview of the Essential Fish Habitat (EFH) provisions of the Magnuson- Stevens Fishery Conservation and Management Act (MSFCMA) and implementing regulations. The following pages provide a brief legislative and regulatory background, introduce the concept of EFH, and describe consultation requirements. Consistent with elements of the NMFS's National Habitat Plan, Strategic Plan, and Habitat Conservation Policy, this document is intended to: provide a mechanism for information exchange; foster interagency discussion and problem-solving; and enhance communication and coordination among the NMFS, regional fishery management councils (FMC), and affected state and Federal agencies. Ultimately, improved interagency coordination and consultation will enhance the ability of the agencies, working cooperatively, to sustain healthy and productive marine fishery habitats.

Legislative and Regulatory Background

The 1996 amendments to the MSFCMA (excerpted at Appendix 1) set forth a new mandate to identify and protect important marine and anadromous fisheries habitat. NMFS and the FMCs, with assistance from NMFS, are required to delineate EFH in fishery management plans (FMP) or FMP amendments for all Federally managed fisheries. Federal action agencies which fund, permit, or carry out activities that may adversely affect EFH are required to consult with NMFS regarding potential adverse impacts of their actions on EFH, and respond in writing to NMFS and FMC recommendations. In addition, NMFS is directed to comment on any state agency activities that would impact EFH.

The purpose of addressing habitat in this act is to further one of the Nation's important marine resource management goals - maintaining sustainable fisheries. Achieving this goal requires the long-term maintenance of suitable marine fishery habitat quality and quantity. Measures recommended to protect EFH by NMFS or an FMC are advisory, not proscriptive. An effective EFH consultation process is vital to ensuring that Federal actions are consistent with the MSFCMA resource management goals.

Guidance and procedures for implementing the 1996 amendments of the MSFCMA were provided through interim final rules established by the NMFS in 1997 (50 CFR Sections 600.805 - 600.930). These rules specify that FMP amendments be prepared to describe and identify EFH and identify appropriate actions to conserve and enhance those habitats. In addition, the rules establish procedures to promote the protection of EFH through interagency coordination and consultation on proposed Federal and state actions.

EFH Designation

The MSFCMA requires that EFH be identified for all fisheries which are Federally managed. This includes species managed by the FMCs under Federal FMPs, as well as those managed by the NMFS under FMPs developed by the Secretary of Commerce. Applicable FMP authorities for the Atlantic coast segment of the NMFS Southeast Region, along with some of the species covered by the FMPs

of the South Atlantic and Mid-Atlantic FMCs, are listed in Appendix 2. Species listed are those for which data were adequate to define and map EFH. The listed species under each FMC's authorities collectively occur throughout the areas managed by the South Atlantic FMC, therefore, inclusion of those species for which life history data are limited would not encompass a greater geographic area. Inclusion of species managed by the Mid-Atlantic FMC is necessary because EFH for some species managed by that council has been identified to extend as far south as the Florida Keys in the South Atlantic area. Similar information is provided in Appendix 3 for billfish and other highly migratory species directly managed by the NMFS.

EFH is defined in the MSFCMA as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The rules promulgated by the NMFS in 1997 further clarify EFH with the following definitions: **waters** - aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; **substrate** - sediment, hard bottom, structures underlying the waters, and associated biological communities; **necessary** - the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and **spawning, breeding, feeding, or growth to maturity** - stages representing a species' full life cycle. EFH may be a subset of all areas occupied by a species. Acknowledging that the amount of information available for EFH determinations will vary for the different life stages of each species, the rules direct the FMCs to use the best information available, to take a risk averse approach to designations, and to be increasingly specific and narrow in their delineations as more refined information becomes available.

The areas designated as EFH by the South Atlantic and Mid-Atlantic FMCs are generalized in Appendix 4. Additional sources of information, useful for preparing EFH assessments, and to further one's understanding of EFH designations and Federally managed fishery resources are available through the NMFS and FMCs. Appendix 9 provides citations for published Fishery Management Plan amendments and identifies web sites containing information on the MSFCMA, the NMFS interim final rules for the implementation of EFH designation and consultation provisions, and data on specific managed fisheries and associated habitats. NMFS and FMC points of contact are identified in Appendix 10.

The rules also direct FMCs to consider a second, more limited habitat designation for each species in addition to EFH. Habitat Areas of Particular Concern (HAPCs) are described in the rules as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. In general, HAPC include high value intertidal and estuarine habitats, offshore areas of high habitat value or vertical relief, and habitats used for migration, spawning, and rearing of fish and shellfish. Areas identified as HAPC by the NMFS and the FMCs are presented in Appendix 5. For a complete description of designated HAPCs the reader should reference EFH amendments of the Councils and NMFS. HAPCs are not afforded any additional regulatory protection under the MSFCMA; however, Federal actions with potential adverse impacts to HAPCs will be more carefully scrutinized during the consultation process and will be subject to more stringent EFH conservation recommendations.

Designating the spatial and seasonal extent of EFH has taken careful and deliberate consideration by NMFS and the FMCs. The effort to identify and delineate EFH in the various fishery management plans was a rigorous process that involved advice and input by numerous state and Federal agencies and the public at large. The South Atlantic FMC has produced a generic management plan amendment to define and designate EFH for all of its managed fisheries. The Mid-Atlantic FMC and NMFS have prepared multiple FMPs/amendments to identify EFH withing their respective authorities. Reference may be made to Appendices 6 through 8 for summaries of many of the Federally-manged species and the associated categories of EFH for each life stage based on information provided by the FMCs (note, information for all species and all life stages is not available). These three appendices are intended to provide a summary of habitat and geographic

information on species managed by the South Atlantic and Mid-Atlantic FMCs, as well as for highly migratory species managed by the NMFS, where EFH has been identified for the managed species within oceanic, coastal, and estuarine habitats of the southeastern U.S. To review a definitive description of EFH, the reader should refer to each of the FMP amendments for a species-specific descriptions of EFH.

Besides delineating EFH, the FMP amendments produced by NMFS and each council identifies and describes potential threats to EFH, which include threats from development, fishing, or any other sources. Also identified are recommend EFH conservation and enhancement measures. Guidelines used in the development of EFH amendment sections for each of these issues are included in the EFH rules.

FMCs and NMFS also are required to implement management measures to minimize, to the extent practicable, any adverse impacts to EFH caused by fishing gears. Those measures can include area closures, gear restrictions, seasonal restrictions, and other measures designed to avoid or minimize degradation of EFH attributable to fishing activities. The councils have imposed various protective measures on some of the fisheries under their jurisdiction and are coordinating with the NMFS to identify research necessary to determine where additional conservation measures might be appropriate.

EFH Consultations

In the regulatory context, one of the most important provisions of the MSFCMA for conserving fish habitat is that which requires Federal agencies to consult with NMFS when any activity proposed to be permitted, funded, or undertaken by a Federal agency may have adverse affects on designated EFH. The consultation requirements in the MSFCMA direct Federal agencies to consult with NMFS when any of their activities may have an adverse affect on EFH. The EFH rules define an **adverse affect** as "any impact which reduces quality and/or quantity of EFH...[and] may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat wide impacts, including individual, cumulative, or synergistic consequences of actions."

The consultation provisions have caused some concern among Federal action agencies regarding potential increases in workload and the regulatory burden on the public. NMFS has addressed these concerns in the EFH rules by emphasizing and encouraging the use of existing environmental review processes and time frames. Provided the specifications outlined in the rules are met, EFH consultations should be incorporated into interagency procedures previously established under the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

To incorporate EFH consultations into coordination, consultation and/or environmental review procedures already required by other statutes, three criteria must be met:

(1) The existing process must provide NMFS with timely notification of the action;

(2) Notification of the action must include an *EFH Assessment* of the impacts of the proposed action as outlined in the EFH rules; and

(3) NMFS must have completed a written *finding* that the existing coordination process satisfies the requirements of the MSFCMA.

An *EFH Assessment* is a review of the proposed project and its potential impacts to EFH. As set forth

in the rules, *EFH Assessments* must include: (1) a description of the proposed action; (2) an analysis of the effects, including cumulative effects, of the action on EFH, the managed species, and associated species by life history stage; (3) the Federal agency's views regarding the effects of the action on EFH; and (4) proposed mitigation, if applicable. If appropriate, the assessment should also include the results of an on-site inspection, the views of recognized experts on the habitat or species affects, a literature review, an analysis of alternatives to the proposed action, and any other relevant information.

Once NMFS learns of a Federal or state activity that may have an adverse effect on EFH, NMFS is required to develop EFH conservation recommendations for the activity, even if consultation has not been initiated by the action agency. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH and are to be provided to the action agency in a timely manner. The MSFCMA also authorizes FMCs to comment on Federal and state projects, and directs FMCs to comment on any project which may substantially impact EFH. The MSFCMA requires that Federal agencies respond to EFH conservation recommendations of the NMFS and FMCs in writing and within 30 days.

Consultations may be conducted through programmatic, general concurrence, or project specific mechanisms. Evaluation at a programmatic level may be appropriate when sufficient information is available to develop EFH conservation recommendations and address all reasonably foreseeable adverse impacts under a particular program area. General Concurrences can be utilized for categories of similar activities having minimal individual and cumulative impacts. Programmatic and General Concurrence consultations minimize the need for individual project consultation in most cases because NMFS has determined that the actions will likely result in no more than minimal adverse effects, and conservation measures would be implemented. For example, NMFS might agree to a General Concurrence for the construction of docks or piers which, with incorporation of design or siting constraints, would minimally affect Federally managed fishery resources and their habitats.

Consultations at a project-specific level are required when critical decisions are made at the project implementation stage, or when sufficiently detailed information for development of EFH conservation recommendations does not exist at the programmatic level. To facilitate project-specific consultations, NMFS and the action agency should discuss how existing review or coordination processes can be used to accomplish EFH consultation. With agreement on how existing coordination mechanisms will be used, the NMFS will transmit a *findings* letter to the action agency describing the conduct of EFH consultation within existing project review frameworks.

Project specific consultations must follow either the abbreviated or expanded procedures. Abbreviated consultations allow NMFS to quickly determine whether, and to what degree, a Federal action may adversely impact EFH, and should be used when impacts to EFH are expected to be minor. For example, the abbreviated consultation procedure would be used when the adverse effect of an action or proposed action could be alleviated through minor design or operational modifications, or the inclusion of measures to offset unavoidable adverse impacts.

Expanded consultations allow NMFS and a Federal action agency the maximum opportunity to work together in the review of an activity's impact on EFH and the development of EFH conservation recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal action agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effect of a proposed action makes expanded consultation appropriate. In addition, it may be determined after review of an abbreviated consultation that a greater level of review and analysis would be appropriate and that review through expanded consultation procedures should be employed. Expanded consultation procedures provide additional time for the development of conservation recommendations, and may be appropriate for actions such as the construction of large marinas or port facilities and activities subject to preparation

of an environmental impact statement.

The MSFCMA mandates that a Federal action agency must respond in writing to EFH conservation recommendations from NMFS and FMCs within 30 days of receiving those recommendations. The rules require that such a response be provided at least 10 days prior to final approval of the action, if a decision by the Federal agency is required in fewer than 30 days. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS conservation recommendations, the agency must explain its reasons for not following the recommendations, including the scientific rationale for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to offset such effects.

The regulations provide an important opportunity to resolve critical and outstanding EFH issues prior to an action agency rendering a final decision. When an agency decision is inconsistent with NMFS conservation recommendations, the NMFS Assistant Administrator may request a meeting with the head of the action agency to further discuss the project and achieve a greater level protection of EFH and Federally managed fisheries. The process for higher level review of proposed actions is not specified in the regulations, rather it is to be addressed on an agency-by-agency basis. In keeping with NMFS's effort to minimize the regulatory burden of EFH consultation requirements, review by the Assistant Administrator and action agency representative should be streamlined and highly focused.

Conclusion

The EFH mandates of the MSFCMA represent an integration of fishery management and habitat management by stressing the dependency of healthy, productive fisheries on the maintenance of viable and diverse estuarine and marine ecosystems. Federal action agencies are required to consult with the NMFS whenever a construction, permitting, funding, or other action may adversely affect EFH. The EFH consultation process will ensure that Federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The NMFS is committed to working with Federal and state agencies to implement these mandates effectively and efficiently, with the ultimate goal of sustaining of the Nation's fishery resources.

Comments, questions, and suggested revisions may be directed to Rickey Ruebsamen (EFH Coordinator), 9721 Executive Center Drive, N. St. Petersburg, FL 33702; phone: 727/570-5317; email: ric.ruebsamen@noaa.gov.

Appendix 1. Selected Text from the Magnuson-Stevens Fishery Conservation and Management Act (As Amended Through October 11, 1996)

16 U.S.C. 1854 note, 1855
M-S Act §§ 304 note, § 305

SEC. 305. OTHER REQUIREMENTS AND AUTHORITY 16 U.S.C. 1855
104-297

(b) FISH HABITAT.
(1) (A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.
(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.
(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.
(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.
(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.
(3) Each Council--
(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and
(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.
(4) (A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.
(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

Appendix 2. Fishery Management Plans and Managed Species for the South Atlantic Region.

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Shrimp Fishery Management Plan

brown shrimp - *Farfantepenaeus aztecus*
pink shrimp - *F. duorarum*
rock shrimp - *Sicyonia brevirostris*
royal red shrimp - *Pleoticus robustus*
white shrimp - *Litopenaeus setiferus*

Red Drum Fishery Management Plan

red drum - *Sciaenops ocellatus*

Snapper Grouper Fishery Management Plan

blackfin snapper - *Lutjanus buccanella*
blueline tilefish - *Caulolatilus microps*
gray snapper - *L. griseus*
greater amberjack - *Seriola dumerili*
jewfish -*Epinephelus itajara*
mutton snapper - *L. analis*
red porgy - *Pagrus pagrus*
red snapper - *L. campechanus*
scamp - *Mycteroperca phenax*
silk snapper - *L. vivanus*
snowy grouper - *E. niveatus*
speckled hind - *E. drummondhayi*
vermilion snapper - *Rhomboplites aurorubens*
yellowedge grouper - *E. flavolimbatus*
warsaw grouper - *E. nigritus*
white grunt - *Haemulon plumieri*
wreckfish - *Polyprion americanus*

Coastal Migratory Pelagics Fishery Management Plan

dolphin - *Coryphaena hippurus*
cobia - *Rachycentron canadum*
king mackerel - *Scomberomorus cavalla*
Spanish mackerel - *S. maculatus*

Golden Crab Fishery Management Plan

golden crab - *Chaceon fenneri*

Spiny Lobster Fishery Management Plan

spiny lobster - *Panulirus argus*

Coral and Coral Reef Fishery Management Plan

varied coral species and coral reef communities comprised of several hundred species

Calico Scallop Fishery Management Plan

calico scallop - *Argopecten gibbus*

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

black sea bass - *Centropristus striata*
scup - *Stenotomus chrysops*
summer flounder - *Paralichthys dentatus*

Bluefish Fishery Management Plan

bluefish - *Pomatomus saltatrix*

Atlantic Surfclam and Ocean Quahog Fishery Management Plan

ocean quahog - *Artica islandica*
surfclam - *Spisula solidissima*

Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

Atlantic butterfish - *Peprilus triacanthus*
Atlantic mackerel - *Scomber scombrus*
long finned squidf - *Loligo peales*
short finned squid - *Illex illecebrosus*

Dogfish Fishery Management Plan

spiny dogfish - *Squalus acanthias*

Appendix 3. Species Managed under the Federally-Implemented Fishery Management Plans.

NATIONAL MARINE FISHERIES SERVICE

Billfish

blue marlin - *Makaira nigricans*
longbill spearfish - *Tetrapturus pfluegeri*
sailfish - *Istiophorus platypterus*
white marlin - *T. albidus*

Swordfish

swordfish - *Xiphias gladius*

Tuna

albacore - *Thunnus alalunga*
Atlantic bigeye - *T. obesus*
Atlantic yellowfin - *T. albacares*
skipjack - *Katsuwonus pelamis*
western Atlantic bluefin - *T. thynnus*

Sharks

Atlantic angel shark - *Squatina dumerili*
Atlantic sharpnose shark - *Rhizoprionodon terraenovae*
basking shark - *Cetorhinus maximus*
bigeye sand tiger - *Odontaspis noronhai*
bigeye sixgill shark - *Hexanchus vitulus*
bigeye thresher shark - *Alopias superciliosus*
bignose shark - *Carcharhinus altimus*
blacknose shark - *C. acronotus*
blacktip shark - *C. limbatus*
blue shark - *Prionace glauca*
bonnethead - *Sphyrna tiburo*
bull shark - *C. leucas*

Sharks (cont.)

Caribbean reef shark - *C. perezi*
Caribbean sharpnose shark - *R. porosus*
common thresher shark - *A. vulpinus*
dusky shark - *C. obscurus*
finetooth shark - *C. isodon*
Galapagos shark - *C. galapagensis*
great hammerhead - *S. mokarran*
lemon shark - *Negaprion brevirostris*
longfin mako shark - *Isurus paucus*
narrowtooth shark - *C. brachyurus*
night shark - *C. signatus*
nurse shark - *Ginglymostoma cirratum*
oceanic whitetip shark - *C. longimanus*
porbeagle shark - *Lamna nasus*
sandbar shark - *C. plumbeus*
sand tiger shark - *O. taurus*
scalloped hammerhead - *S. lewini*
sharpnose sevengill shark - *Heptranchias perlo*
shortfin mako shark - *I. oxyrinchus*
silky shark - *C. falciformis*
sixgill shark - *H. griseus*
smalltail shark - *C. porosus*
smooth hammerhead - *S. zygaena*
spinner shark - *C. brevipinna*
Tiger shark - *Galeocerdo cuvieri*
whale shark - *Rhinocodon typus*
white shark - *Carcharodon carcharias*

Appendix 4. Essential Fish Habitat Identified in Fishery Management Plan Amendments of the South Atlantic and Mid-Atlantic Fishery Management Councils. (Generally, EFH for species

managed under the NMFS Billfish and Highly Migratory Species plans falls within the marine and estuarine water column habitats designated by the councils)

South Atlantic FMC

Estuarine areas

Estuarine emergent wetlands

Estuarine scrub/shrub mangroves

Submerged aquatic vegetation

Oyster reefs & shell banks

Intertidal flats

Palustrine emergent & forested wetlands

Aquatic beds

Estuarine water column

Marine areas

Live/Hard bottoms

Coral & coral reefs

Artificial/manmade reefs

Sargassum

Water column

Mid-Atlantic FMC

Estuarine areas

Seagrass

Creeks

Mud bottom

Estuarine water column

Marine areas

Water column

Appendix 5. Geographically Defined Habitat Areas of Particular Concern Identified in Fishery Management Plan Amendments Affecting the South Atlantic Area.

South Atlantic

Area-wide

- Council-designated artificial reef special management zones
- Hermatypic coral habitat and reefs
- Hard bottoms
- Hoyt Hills
- *Sargassum* habitat
- State-designated areas of importance to managed species
- Submerged aquatic vegetation

North Carolina

- Big Rock
- Bogue Sound
- Pamlico Sound at Hatteras/Okracoke Islands
- Capes Hatteras, Fear and Lookout (sandy shoals)
- New River
- The Ten Fathom Ledge
- The Point

South Carolina

- Broad River
- Charleston Bump
- Hurl Rocks

S. Atlantic (cont)

Georgia

Gray's Reef National Marine Sanctuary

Florida

Blake Plateau (manganese outcroppings)

Biscayne Bay

Biscayne National Park

Card Sound

Florida Bay

Florida Keys National Marine Sanctuary

Jupiter Inlet Point

Mangrove habitat

Marathon Hump

Oculina Bank

Phragmatopoma (worm) reefs

The Wall (Florida Keys)

Appendix 6. Summary of EFH Requirements for Species Managed by the South Atlantic Fishery Management Council.

Species	Life Stage	Ecosystem	EFH
Brown shrimp			
EFH identified from	eggs	Marine (M)	demersal 13.7 - 110 m
NC - FL Keys	larvae	M	planktonic <110 m
	postlarvae/juvenile	Estuarine (E)	marsh edge, SAV, tidal creeks, inner marsh
	subadults	E	mud bottoms, marsh edge
	adults	M	<110 m, silt sand, muddy sand
White shrimp			
EFH identified from	eggs	M	nearshore & 6.1 - 24.4 m, demersal
NC - St. Lucie Inlet, FL	larvae	M	<24.4 m, planktonic
	postlarvae/juvenile	E	mud/peat marsh edge, SAV, marsh ponds, inner marsh
	subadults	E	mud/peat marsh edge, SAV, marsh ponds, inner marsh
	adults	M	<27 m, soft mud
Pink shrimp			
EFH identified from	eggs	M	3.7 - 16 m, demersal
NC and FL	larvae	M	planktonic <16 m
	postlarvae/juvenile	E	SAV, sand/shell substrate
	subadults	E	SAV, sand/shell substrate
	adults	M	<100 m; hard sand/shell substrate
Penaeid HAPC - tidal inlets & state nursery and overwintering habitats			
Rock shrimp			
EFH identified from	adults	M	terrigenous and biogenic sand, 18 - 182 m
NC - FL Keys			
Royal red shrimp			
EFH identified from	adults	M	mud/sand substrate 180 - 730 m
NC - FL			